

Developing A Road Inventory

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It happens to every municipal officer at some point: a couple walks in to the town hall and demands to know why the town hasn't fixed the road where they have built a new home, and if it isn't fixed soon, their lawyer will sue the town.

This situation causes aggravation and confusion in the town office, since no one is sure how to quickly determine the town's legal rights and responsibilities with respect to a particular road or street. The municipal officers are called on to determine the status of the road, and they need the answer as soon as possible.

One way to deal with this situation is to develop and maintain a "road inventory," which is a book (or computer disc) containing information needed to answer legal questions about roads. A road inventory can also be kept for physical maintenance purposes (which roads need what repair), but that is not the subject of this article. The Local Roads Center of the MDOT should be contacted at 624-32790 for information about a physical maintenance road inventory.

This article explains why and how a town should keep a road inventory for legal purpose, and what information is needed to determine the status of a road.

Why have a road inventory? The goal of a road inventory is to reduce problems and arguments associated with roads. In other words, it should make it easier for the selectmen or road commissioner to determine the status of a road and respond to questions from the public. By collecting and compiling all road-related information into a single volume or disc, you can provide quick and accurate answers to what may now be thorny and time-consuming questions.

State law does not require that a road inventory be kept at all. Many towns keep an informal inventory, while others rely only on the road commissioner's memory for guidance. The drawback with this is that, when the road commissioner goes, so does all your information. It is much better to have that information available in writing for future use, so that you need not "re-invent the wheel" every time the legal status of a road is in question.

There are three main areas in which a road inventory should prove useful:

- 1) As a source of information for assisting and educating the public. For example, if new residents have questions about what maintenance to expect on their particular road, the inventory would provide that information quickly and succinctly.

2) An inventory helps municipal officials plan for the future. For example, the town has 50 miles of roads which have fallen into disrepair, and the selectmen want to know whether they can discontinue or abandon those roads. The information needed to decide this could be found in the road inventory.

3) To provide information relating to the town's legal liability (for potholes, defects, accidents and so on) and legal rights. For example, a question may arise about an obstruction in a road, and the inventory would help the town official decide what steps the town can or should take. Since a town's legal rights and obligations vary depending on the status of the road and its boundaries, it is beneficial to have that information within easy reach.

What information should the inventory contain? The goal of the inventory is to help answer legal questions, so the inventory should contain at least the following basic information: name of road, its status (as either a town way, public easement, or privately-owned road), its width including the right of way, approximate length, and a designation of whether it was ever abandoned or discontinued. It may also be useful to take a town map, block it into numbered grids, and give each road a grid reference for easier location.

An inventory can contain as much information as is considered useful. For example, it could identify buildings, driveways and culverts along a particular road, it could state whether a road is posted or closed in the winter, or it could indicate whether the town owns the road in fee simple or by easement only. The inventory should refer to deeds, surveys, maps or other documents if these exist. The key is to keep the inventory accurate and manageable—too much information may destroy its usefulness.

How should the inventory be structured? There is no right or wrong way to structure the inventory, but like any filing system it needs to be convenient and understandable to the people using it. A typical inventory is simply a chart with separate squares for the name of the road, status of road, and other pertinent information. An alphabetical listing of roads is most commonly used and is well-suited to updates and new listings. Information which is too bulky to fit on the chart can be kept elsewhere and referenced in the chart. For example, if you have a deed describing the road by metes and bounds, or a record of the town's acceptance of the road, these documents could be referred to by book and page number, or by the year of the town report where the full text can be located. This would allow the user to find the full text of the document without cluttering up the inventory.

How is the road inventory actually created? This will require a joint effort by municipal officials. One person can be in charge of putting information into a book or onto a disc, but getting that information in the first place will be a time-consuming task for one. This problem—collection of the necessary information—is difficult but not impossible. The key is to start with a manageable inventory and build it up, rather than trying to do a complete and perfect list the very

first time. The status and boundaries of many roads may not be in question, so those can be inventoried fairly easily. Other roads may require research before accurate information is found, but these can be done as time and resources permit. A road inventory is never be truly "complete" since information will always be added or deleted. Once an inventory is started, it will be less work to maintain and update it.

In some cases, information will be missing or incomplete. The inventory should refer to notes that reflect what was found and not found, and the scope of the search. This will save some other official from wasting time on a fruitless search, and it may also help an official make a decision. For example, if there is a question about whether a road is abandoned, and the selectmen look back over fifty years' of records and find no evidence of regular maintenance, they could deem the road to be abandoned. A person opposing this decision would have the burden of producing rebuttal evidence, and it is unlikely that any such evidence exists or it would have been discovered by the selectmen. If such evidence is produced, then the inventory could be corrected accordingly.

What are the sources of information? Information for the road inventory comes from several sources. First and foremost, look at past Town Reports for references to particular roads or the budget for roads. This may answer questions about what maintenance, if any, has been done over the years. Likewise, Town Reports should contain articles about accepting or discontinuing roads. The vote on the article may appear in the Report, or be found in the Clerk's minutes for that town meeting. Also, look for any notes or records from past Selectmen's meetings as well as those kept by former road commissioners.

A second source of road information is the public. Longtime residents or former municipal officials may remember what was done (or not done) on particular roads. Likewise, developers putting in new roads will usually have good information—surveys, deeds, and the like—about those roads. Getting this now may avoid a headache ten years from now. Much of the information obtained from the public will be oral (memory and recollection) rather than written, but it can be good evidence nonetheless. It may be worthwhile to get an affidavit from a person whose health or memory is failing, in case that information is needed several years hence.

A third source of information about roads is the records of other town boards. For example, the records of a case before the Planning Board or Board of Appeals may contain road descriptions, deeds, surveys, agreements or other evidence useful in the road inventory.

Records from the county or state governments may also be useful, particularly since many town ways were at one time state or county roads. Records in question include maintenance reports, discontinuance actions, surveys and deeds, and road budget documents. The town may find information which establishes that a road was discontinued at the county level and never became a town way.

The Registry of Deeds is the central source of recorded information. This includes deeds, plats subdivision plans, easements, surveys and other documents related to land transactions. The boundaries of a road may be determined by the deeds of abutters along the road. Formal action by the town to create or discontinue a road will also be recorded in the Registry.

Finally, do not overlook Superior and District court records involving land or boundary disputes. Title and boundary disputes are usually heard in Superior court, but not always. Those cases may refer to the boundaries or legal status of a road, even if the case itself involved a different matter. Obviously, if a case concerns the status of a road specifically, the Court's decision should be noted in the inventory.

What is the process for determining the status of a road? The municipal officers (selectmen or councilors) are responsible for making the initial determination of a road's status. A final determination can be made only by a judge.

At the local level, the first step is to identify and pinpoint the road or portion of road in question. Then, review both written and oral information about that road. Critical items include records of laying out and acceptance, history of maintenance, and records of discontinuance, if any. The third step is to reach a conclusion based on the available evidence. Even if the records are sparse, it is important to note what was found. Make copies of any pertinent documents found in the Registry, at court or in other places outside the town office.. Likewise, make notes or get affidavits if the information is a person's recollection.

Once a decision as to the road's status is made, any person opposing that decision will have the burden of producing evidence in rebuttal. That person will have to go to court for a final decision unless the municipal officers are convinced otherwise by the new evidence.

What are the rules about road status? The goal is to determine whether a road is a town way, public easement, or privately-owned road. The following is a list of general legal principles in this regard:

Creation of roads: town roads can be created by formal action of the town (eminent domain, laying out and acceptance, or dedication and acceptance) or informally by prescriptive use. The formal methods must be approved by the voters, so there should be documents to this effect in the town reports and Registry of Deeds. Read those documents carefully as they often indicate whether a road is a town way or public easement. Prescriptive use requires that the town maintain a road in an "open and notorious" manner for at least 20 consecutive years. Evidence of this may be in town reports or from residents' recollections.

Discontinuance: formal town action is required to discontinue a road. Records of a discontinuance will be recorded in the Registry, and should be found as well in the minutes of the annual or special town meetings of the years in question. Review these records carefully to make certain that the procedure was done in accordance with the laws in effect at that time. The laws have changed over the years and present law may require something not required when the discontinuance took place.

Abandonment: abandonment occurs without formal action of the town. What is required is that no regular maintenance occur for a period of 30 consecutive years. Sporadic maintenance such as patching potholes or replacing a culvert will not rebut a presumption of abandonment. Much of the evidence in abandonment cases is personal recollection, although a review of town reports (particularly road budgets) should be done. A thorough search is always recommended as it builds the town's case and also reveals evidence against the town.

For more details on the legal principles governing road status, see MMA's *Municipal Roads Manual* and see Title 23, Maine Revised Statutes Annotated (the State law).

What does the road inventory not do? A road inventory should not be considered the final word on road-related questions. The inventory is a guide to make better decisions, but only a Court can make final and binding decisions with respect to legal rights and obligations. With a good inventory, however, you may be able to keep a dispute from going to court. Even if litigation occurs, a road inventory saves time and legal fees by providing information quickly.

The opinions printed above are written with the intent to provide general guidance as to the treatment of issues or problems similar to those stated in the opinion. The reader is cautioned not to rely on the information contained therein as the sole basis for handling individual affairs but he/she should obtain further counsel and information in solving his/her own specific problems.